

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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KRITINI DAVENPORT,
Tenant/Petitioner

v.

BORGER MANAGEMENT, INC.,
Housing Provider/Respondent.

Case No.: RH-TP-06-28704
In re 1613 Harvard Street N.W.
Unit 210

ORDER

On March 26, 2008, in response to Housing Provider's motion, I issued an Order Granting Partial Summary Judgment. The Order dismissed certain of Tenant's claims on the grounds that the Housing Accommodation was exempt from coverage under the Rent Stabilization Provisions of the Rental Housing Act because Tenant's rental unit was subsidized by the District of Columbia Government under the Section 8 Housing Assistance Payments Program. The Order reasoned that Housing Provider was not required to register the rental unit with the Rent Administrator to gain the benefit of the exemption because the Rental Housing Act did not require registration as a condition of exemption. D.C. Official Code § 42-3502.05(a). A hearing on two remaining issues was scheduled for May 7, 2008.

Since issuing the Order Granting Partial Summary Judgment, I have become aware of a decision of the Rental Housing Commission that seem to require an outcome contrary to my decision. In *Hammer v. Manor Mgmt. Corp.*, TP 28,006 (RHC May 17, 2006) at 11, the

Commission ruled that a Housing Provider claiming an exemption under D.C. Official Code § 42-3502.05(a)(4) for a building that was vacant in January, 1985, was required to file a claim of exemption form to obtain the benefits of exemption under the Act. The Commission held that “the exemption . . . is conditioned on the filing of a claim of exemption.” *Id.* at 13. A copy of the decision is enclosed for ready reference.

The *Hammer* case, like the case at bar, and unlike cases arising under the “Small Landlord Exception” of D.C. Official Code § 42-3502.05(a)(3), involved an exemption that did not require registration under the plain language of the Rental Housing Act. The Commission relied instead, on the requirement for registration that it had promulgated in the Rental Housing Regulations. 14 District of Columbia Municipal Regulations (DCMR) 4106.1, 4106.6.

I am inclined to reconsider my ruling in the Order Granting Partial Summary Judgment because I see no way to distinguish the *Hammer* case from the situation here and I am aware of no more recent decisions from the Rental Housing Commission or from the Court of Appeals that would distinguish or undermine the authority of *Hammer*. But before I decide the issue, I will give the parties an opportunity to submit any arguments or authority that they consider appropriate. I will postpone the scheduled hearing on May 7, 2008, until I have made a final decision as to the issues that are appropriate for hearing.

Accordingly, it is this 29th day of **April, 2008**,

ORDERED, that the hearing of this case set for May 7, 2008, at 9:30 a.m. is **CANCELLED**; and it is further

ORDERED, that this administrative court moves *sua sponte* to reconsider the Order Granting Partial Summary Judgment of March 26, 2008; and it is further

ORDERED, that on or before **May 13, 2008**, the parties may submit argument and authority as to whether a housing provider is required to file Registration/Claim of Exemption Form in order to claim an exemption under D.C. Official Code § 42-3502.05(a)(1) for a property that receives District rent subsidies; and it is further

ORDERED, that either party may file a response or opposition to the submission of the opposing party within five days of service of the opposing party's submission; and it is further

ORDERED, that this administrative court will set a new date for the hearing of this matter after it issues a decision on the motion for reconsideration.

/s/
Nicholas H. Cobbs
Administrative Law Judge